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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,136	03/30/2001	Vincent T. Kozyrski	6611-01	8251
50811	7590	06/16/2005	EXAMINER	
O'SHEA, GETZ & KOSAKOWSKI, P.C. 1500 MAIN ST. SUITE 912 SPRINGFIELD, MA 01115			PRONE, JASON D	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,136

Applicant(s)

KOZYRSKI ET AL.

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,13 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,13 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. PROSECUTION IS HEREBY REOPENED in light of the newly discovered references. In view of the newly cited references, a new grounds of rejection is set forth below.

Specification

2. The specification is objected to under 37 CFR 1.71, as being confusing and difficult to comprehend the invention and compare with the prior art. For example, the following is not understood: It is unclear why an edge angle of about 40° to 50° provides an increase in safety. It is uncertain how an edge angle of about 40° to 50° makes a blade safer compared to a blade with an edge angle, for example, of about 55°. Also, it is unclear why an edge angle of approximately 45° is preferable for paper product type thin sheet material. Basically, the specification lacks the reasons why the specific edge angle, of about 40° to 50° degrees preferably 45°, is critical. See rejection under first paragraph of 35 U.S.C. 112 below for more details.

Applicant is required to submit an amendment which clarifies the disclosure so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 4-6, 13, and 25-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is unclear why an edge angle of about 40° to 50° provides an increase in safety. It is uncertain how an edge angle of about 40° to 50° makes a blade safer compared to a blade with an edge angle, for example, of about 55°. Using the preferred angle of 45°, applicant describes a 45° angle being safer than an edge angle of 20° or less. However, suppose the cutter with a 20° edge angle is duller but otherwise is capable of performing a satisfactory cutting, why is this not as safe? Going the other way, what makes the edge angle of 45° safer than an edge angle of 55° or more? Basically, what criticality does the 45° angle incorporate that makes it safer than the sharper 20° angle and the less sharp 55° degree angle. Also, it is unclear why an edge angle of approximately 45° is preferable for paper product type thin sheet material as disclosed. Summarizing, the specification lacks the reasons why the specific edge angle, of about 40° to 50° preferably 45°, is critical, and why this is better than any other angle especially with respect to paper sheet material.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-6, 13, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Belcourt (4,733,472).

In regards to claims 1 and 4-6:

Belcourt discloses the same invention including a hand held rotary cutter with a handle having a handgrip portion (Column 1, line 10 states a "manual...means for opening cans have been in use for many years" therefore it is inherent that a hand gripping portion is incorporated), a circular cutting blade having a cutting edge (41), a diameter (see Fig. 4), and a thickness (see Fig. 4), the cutting blade is pivotally mounted to the handle (see Fig. 5), the cutting edge includes an edge angle that is substantially equal to 45° (Column 2, lines 54-56 and 61-63 { $C+D=45^\circ$ }), and the diameter of the cutting blade is substantially equal to six times the thickness (see Fig. 4 {Blade 40 incorporates multiple thicknesses ranging from the thickest at point 45 to the thinnest at point 41. The diameter is less than six times the thickness at point 45 and is more than six times the thickness at point 41. The blade 40 has a diameter that fits the "six times" ratio in-between points 45 and 41}).

In regards to claim 13:

Belcourt discloses the same invention including a hand held rotary cutter with a handle having a handgrip portion (Column 1, line 10 states a "manual...means for opening cans have been in use for many years" therefore it is inherent that a hand gripping portion is incorporated), a replaceable cutting blade (40 and Column 3, 2nd full paragraph) and clip assembly (35 and 32), the cutting blade includes thickness (see Fig.

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4), a diameter not greater than fifteen times the thickness (see Fig. 4), a cutting edge having an edge angle that is not less than 40° and not greater than 50° (Column 2, lines 54-56 and 61-63 {C+D= 45° }), the cutting blade is rotatably mounted on the clip assembly (see Fig. 5), and the cutting blade and clip assembly is attached to the handle and can be selectively replaced (see Fig. 5).

In regards to claims 25-27:

Belcourt discloses the same invention including a hand held rotary cutter with a handle having a handgrip portion (Column 1, line 10 states a "manual...means for opening cans have been in use for many years" therefore it is inherent that a hand gripping portion is incorporated), a circular cutting blade having a cutting edge (41), a diameter (Fig. 4), and a thickness (Fig. 4), the cutting blade is pivotally mounted to the handle (Fig. 5), and the cutting edge includes an edge angle that is substantially equal to 45° (Column 2 lines 54-56 and 61-63 {C+D= 45° }).

In regards to claims 28-30:

Belcourt discloses the same invention including a cutting blade (40) comprising a body having a diameter and a thickness (44), a cutting edge extending around the periphery of the body (41), the cutting edge includes an edge angle that is substantially equal to 45° (Column 2, lines 54-56 and 61-63 {C+D= 45° }), an axial aperture that extends side to side through the thickness of the body (48), and the diameter is not greater than fifteen times the thickness (Fig. 4).

7. Claims 1, 4, 5, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (5,758,426).

In regards to claims 1, 4, and 5:

Richter discloses the same invention including a hand held rotary cutter with a handle having a hand grip portion (15), a circular cutting blade having a cutting edge (21), a diameter (see Fig. 5), and a thickness (see Fig. 4), the cutting blade is pivotally mounted to the handle (19), the cutting edge includes an edge angle that is substantially equal to 45° (Column 4, line 1), and the diameter of the cutting blade is not greater than fifteen times the thickness (Column 4, lines 16-18).

In regards to claims 28-30:

Richter discloses the same invention including a body (21) having a diameter and a thickness (see Figs. 4 and 5), a cutting edge extending around the periphery of the body (33), the cutting edge angle that is substantially equal to 45° (Column 4, line 1), and the diameter of the cutting blade is not greater than fifteen times the thickness (Column 4, lines 16-18).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 4-6, 13, and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belcourt in view of Liebscher (5,581,897).

To the degree that it could be argued that the Belcourt reference does not incorporate a handle, the additional rejection is made.

Belcourt discloses the invention (see above rejection), however, fails to disclose a handle having a handgrip portion. Liebscher teaches a handle having a handgrip portion (1). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Belcourt, with a handgrip portion, as taught by Liebscher, to provide a means of holding a manual can opener.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 4-6, 13, and 25-30 have been considered but are moot in view of the new ground(s) of rejection. The term "clip assembly", of claim 13, is defined as:

clip (klîp) *noun*

1. Any of various devices for gripping or holding things together; a clasp or fastener.¹

Items 35 and 32, of the Belcourt reference, clearly form a fastener assembly that holds the cutting unit together.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 571-272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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